IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

WP(C).No. 33408 of 2007(B)

CC.776/2002 of J.M.F.C.-I, ALUVA

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PETITIONER:

N.A.SUBAIR,SUDHEER & COMPANY,CHENGAMANAD

BY ADV. SRI.B.RAMACHANDRAN
SMT.JOLIMA GEORGE
SMT.P.N.INDU

RESPONDENTS:

BRIJITH MATHEW,W/O.MATHEW,PARTNER,
COCHIN MARKETING SERVICES,ALUVA AND RESIDING AT
URUMBATH HOUSE,THOTTAKATTUKARA,ALUVA.

BY GOVERNMENT PLEADER SRI.P.RAVEENDRA BABU

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J.

W.P.C.No.33408 of 2007

Dated this the 22nd day of November 2007

J U D G M E N T

The petitioner has been found guilty, convicted and sentenced in six prosecutions all under Section 138 of the Negotiable Instruments Act. In five cases, the verdict of guilty, conviction and sentence have become final with Exts.P2 and P3 orders passed by this court in revision. The petitioner in these five cases now faces a sentence of imprisonment till rising of court. There is a further direction to pay compensation under Section 357(3) Cr.P.C. Default sentence has also been prescribed. In respect of the sixth case, the matter stands with Ext.P1 judgment passed by the appellate/Sessions Court.

2. The learned counsel for the petitioner submits that the petitioner has settled the disputes with the common complainant in all the six matters. The entire amounts due by way of compensation in the five cases have already been paid to the complainant and the complainant accepts that he has no further amounts to be received by way of compensation. The petitioner apprehends that he may still be compelled to undergo

the default sentence by the learned Magistrate. He prays that appropriate directions may be issued accepting the composition.

3. In respect of Ext.P1, that is C.C.No.1648/2001 before the Judicial First Class Magistrate Court-I, Aluva and Crl.A.No.289/04 of the Sessions Court, Ernakulam, the petitioner has the option to come before this court and challenge the verdict of guilty, conviction and sentence in revision. Notwithstanding the fact that there is delay, an application for condonation of delay can be filed and appropriate relief can be sought in such revision. I am, in these circumstances, not granting any relief or making any observation in respect of Ext.P1 case.

4. But in so far as Exts.P2 and P3 cases are concerned, the petitioner faces only a sentence of imprisonment till rising of court. He must appear before the learned Magistrate and undergo the said sentence of imprisonment till rising of court. If the petitioner and the complainant appear before the learned Magistrate and report to the learned Magistrate that the compensation amount payable in respect of all the five cases covered by Exts.P2 and P3 have been paid and discharged, there

can be no question of the default sentences being executed against him. The position has been made crystal clear in Girish v. Muthoot Capital Service (P) Ltd. [2007(1) KLT 16]. The last trace of doubt, if any, has been brought to rest with that decision.

5. In the result, this petition is dismissed but with the observation that the petitioner can appear before the learned Magistrate in all the five cases covered by Exts.P2 and P3 and report to the learned Magistrate along with the complainant that the compensation amount has been paid and discharged. If the learned Magistrate is satisfied about that, the default sentence should not be executed against the petitioner.

6. No relief can be granted in respect of Ext.P1. The petitioner can seek relief in revision.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007